4-29-2015

Pandrea v. Barrett Appellant's Brief Dckt. 42333

IN THE SUPREME COURT IN THE STATE OF IDAHO

MARY E. PANDREA, a single person, Individually and as Trustee of the Kari A. Clark and Mary E. Pandrea Revocable Trust u/a April 9, 2002 Plaintiff-Counterdefendant-Appellant v. KENNETH J. BARRETT and DEANNA L. BARRETT, husband and wife, Defendants-Counterclaimants-Respondents.	)	DOCKET NO. 42333-2014 BONNER COUNTY CV-2011-835

Appeal from the District Court of the First Judicial District
Of the State of Idaho, in and for the County of Bonner

Honorable John P. Luster, Presiding

APPELLANT'S BRIEF ON APPEAL

Kenneth and Deanna Barrett
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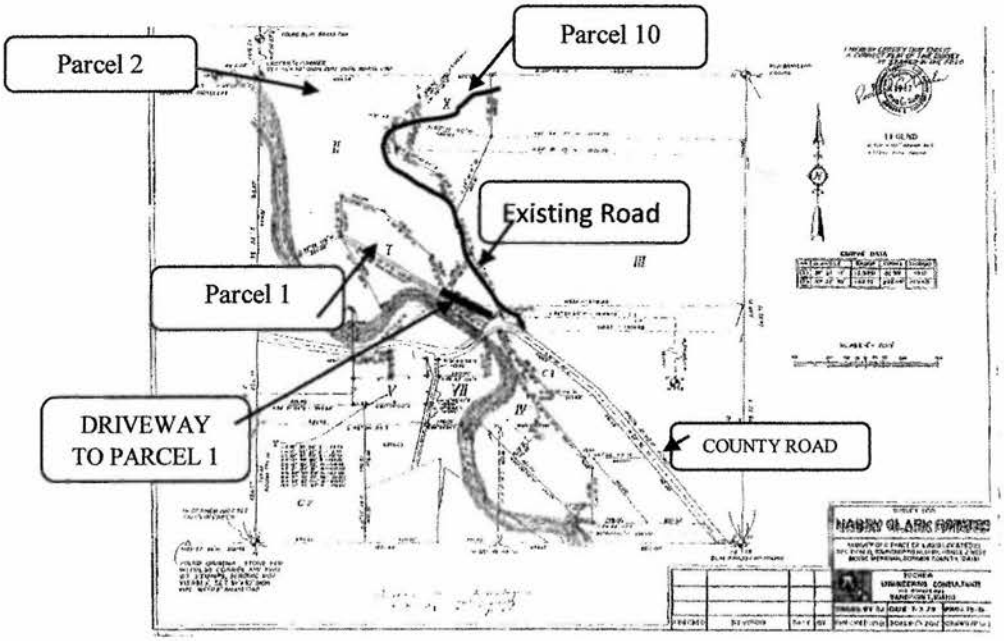
A. Nature of Case.

This appeal arises from issues of the District Court's September 11, 2014 final judgment and decree of partition concerning two (2) parcels of real property. This case also involves a complexity of facts related to activities outside of the underlying case that have been woven into the final disposition of the properties.

The Appellant/ Plaintiff, Mary E. Pandrea ("Pandrea") and the Defendant, Kari A. Clark ("Clark"), are two of eight siblings. Pandrea and Clark purchased two parcels of real property from their parent's estate. Parcel 1 was purchased in 1980 by Pandrea, while Parcel 2 was purchased eleven (11) years later by Clark. Pandrea and Clark were co-tenants in both parcels via quitclaim deeds. In 2002, the parcels were conveyed into the Clark/Pandrea Revocable Trust ("the trust"). A third parcel (Parcel 10), that was individually owned by Clark, was also conveyed to the trust. The trust provided that upon revocation the properties were to be returned to the ownership held at the time the parcels were placed in the trust.



(Ex. 1, p.18)-Map of parcels created from the Clark Estate-*Enhanced*

On or about 2005, Pandrea and another sibling, Ethel M. Boyd had a falling out that escalated to the division of the eight siblings. Over the next five years, Ethel M. Boyd and her family, including her daughter Terri Boyd-Davis; Boyd's son-in-law Brian F. Davis; and Boyd's daughter Deanna L. Barrett, engaged in activities intended to harass Pandrea. Most of these incidents occurred on Pandrea's property.

In April of 2010, Pandrea was sued in Bonner County, Idaho, civil court by Terri Boyd-Davis, Brian F. Davis and Jean L. Coleman. Pandrea was dismissed from this lawsuit in June of 2010.

In May of 2010, Pandrea was sued in civil court in Spokane County, Washington, by Boyd as the Personal Representative of the Estate of their late mother, Edith Clark. An erroneous judgment resulted against Pandrea for $227,425.00, which was reversed by the Washington State Appellate Court in October of 2014.

In July of 2010, Pandrea was notified by Clark's attorney, Shirley Bade, that the Clark/Pandrea Trust had been revoked. Attached to the letter of revocation was a copy of only one *new* deed for Parcel 1 showing the transfer from the Clark/Pandrea Trust to Pandrea and the *new* Kari A. Clark Trust, u/a 2010. There was no mention of Parcel 2 or Parcel 10, nor any deed attached for Parcel 2 or Parcel 10. Pandrea obtained a copy of the *new* deeds Clark created for Parcel 2 and Parcel 10 from the Bonner County Recorder's Office and discovered that Clark had deeded 100% of Parcel 2 and 100% of Parcel 10 to the *new* Kari A. Clark Trust.

After trying unsuccessfully for a year to resolve matters with Clark, Pandrea filed her complaint for partition and accounting of Parcel 1 and Parcel 2 (May 11, 2011). After ownership of Parcel 2 had been in the Kari A. Clark trust for ***over a year***, Clark recorded a "corrected" deed returning ownership of Parcel 2 to that of co-tenancy between Pandrea and the Kari A. Clark

Trust, u/a 2010. The corrected deed was prepared by Clark's niece, Terri Boyd-Davis as the paralegal for Clark's attorney, Shirley Bade. Clark's answers indicate that her attorney, Shirley Bade, made a mistake in preparing a deed conveying all of Parcel 2 to the Kari A. Clark Trust in 2010. There is no affidavit of record by Shirley Bade to verify this information.

Pandrea continued to be harassed by Clark, Ethel M. Boyd and her family during the course of the litigation.

A two day bench trial took place in June of 2012. During Clark's testimony, she contradicted herself and admitted that she intended to convey all of Parcel 2 and all of Parcel 10 to the Kari A. Clark Trust, u/a 2010.

After trial, and before the entry of the final judgment, Pandrea discovered that Clark granted ***all*** interest in Parcel 1 and Parcel 2 to Respondent, Kenneth J. and Deanna L. Barrett ("the Barrett's) by way of a Deed of Trust recorded by Ethel M. Boyd on ***May 17, 2012***, *before* trial. Clark's trial brief specifically contained a section on the current status of the properties as of ***May 25, 2012***, that did not disclose that Clark had encumbered all of Pandrea's interest (for a second time) in Parcel 2. In June of 2013, the Barrett's recorded an affidavit in the Bonner County recorder's Office relinquishing any interest in Pandrea's properties (R., Vol. 3, Bates 0450, ¶2).

The District Court denied all attempts made by Pandrea to add or modify her original claims to add slander of title (and to add as defendants, the Barrett's) based on the newly discovered information. Between the original conveyance of Parcel 2 to Clark's individual trust, and the second conveyance of ***all*** of Parcel 1 and Parcel 2 in the Deed of Trust to the Barrett's, ***Pandrea was without clear title to her properties for over 2 (two) years***. The District Court concluded that Pandrea could appeal these decisions after the partition was complete.

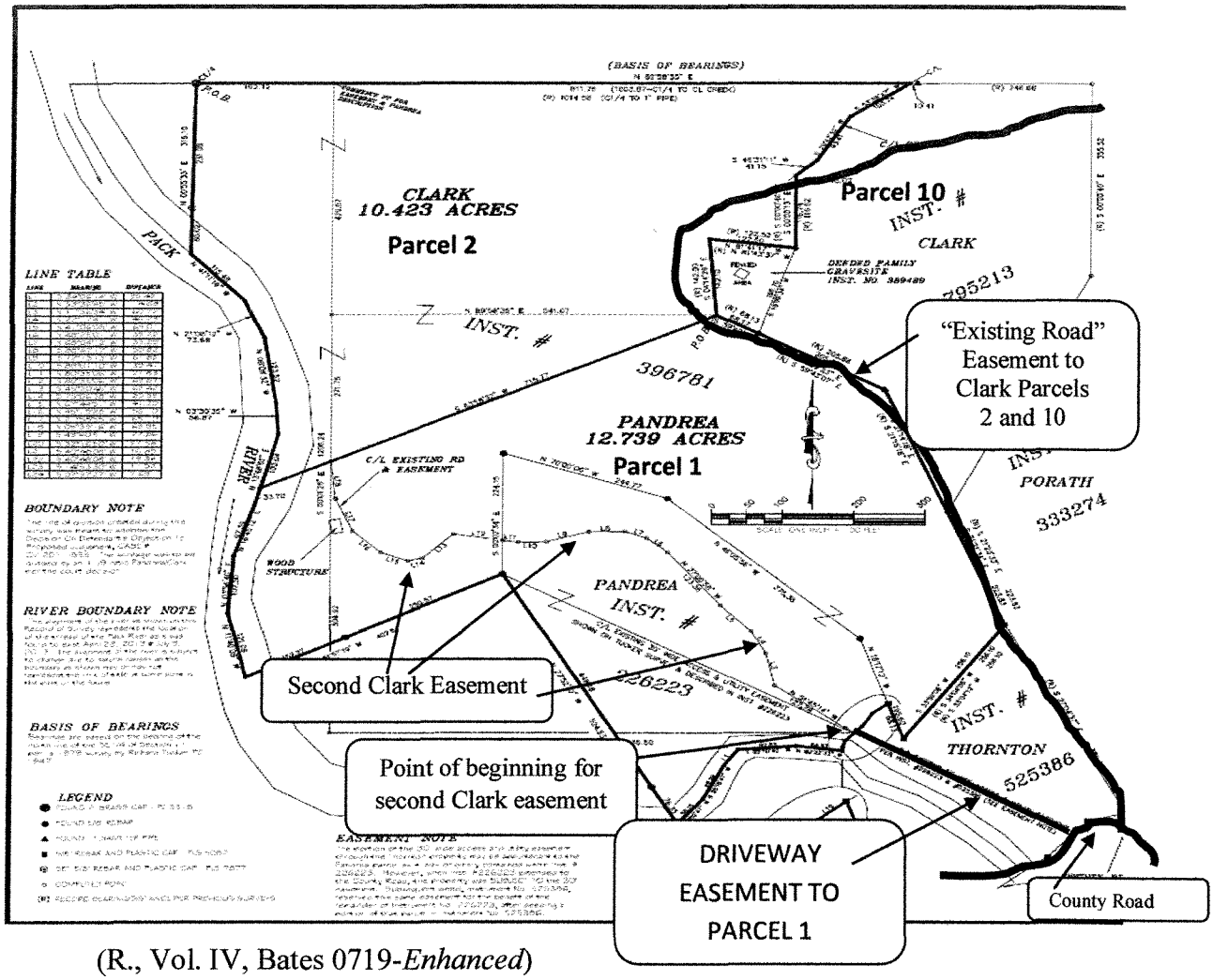
The partition of Parcel 1 and Parcel 2 proceeded as was ordered by the Court. Consideration was given by the District Court for the contributions and improvements the parties made toward the parcels. The Court took into account Pandrea's contributions, totaling $25,570.22 and Clark's contribution of $312.66 (R., Vol. II, Bates 0296, ¶3 and ¶4). The Court adopted Pandrea's position at the conclusion of trial. Pandrea was awarded the entirety of Parcel 1 with a lot line adjustment to incorporate a portion of Parcel 2. Clark was awarded the remainder of Parcel 2.

Pandrea was ordered to prepare a survey reflecting the revised Parcels, with access by way of easement for ingress and egress for the revised Parcels. Pandrea's survey reflected the Court's order for Clark's new Parcel 2 to be contiguous and adjacent to Clark's individually owned Parcel 10. Easement access was described by way of the "Existing Road" that was the easement appurtenant to the original Parcel 2 and Clark's existing Parcel 10.

Clark objected to the Pandrea survey claiming her new Parcel 2 did not provide Clark access to the river front. The District Court agreed with Clark, and ordered Clark to prepare a survey more consistent with the District Court's original intent for partition.

The survey that Clark proposed included a *"new"* second easement from the county road through property owned by John F. Thornton ("Thornton"), and continuing directly down the center of Pandrea's *"new"* Parcel 1 to reach Clark's *"new"* Parcel 2.

Pandrea objected, and Thornton attempted to intervene in the action. The District Court denied Thornton's attempt to intervene, ***but did remove the portion*** of the *"new"* second easement description Clark created to reach the *"new"* Parcel 2 that crossed over the Thornton property (from the county road). The resulting final partition map is depicted below:

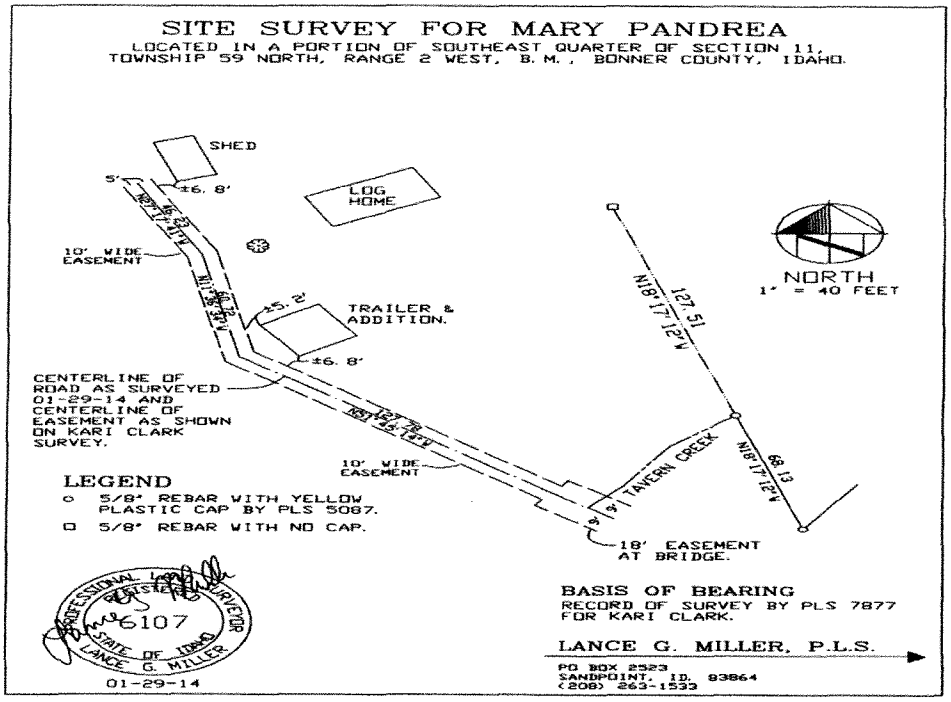


(R., Vol. IV, Bates 0719-*Enhanced*)

The "*new*" second easement was 10 feet wide (18' at the bridge) and was allowed to be described through Pandrea's "*new*" Parcel 1, but not the Thornton parcel. The District Court went one step further and told Clark during a hearing that the "*new*" second easement was ***conditional*** and could not be used unless Clark could prevail in a separate litigation against

Thornton. This "condition" placed on the "*new*" second easement by the Court was never included in the language of the final judgment.

Pandrea requested the Court reconsider its decision and deny Clark an additional second easement to reach the "*new*" Parcel 2 as the "*new*" second easement vitiated the Bonner County Building Codes. The "*new*" second easement crossed through Pandrea's front yard, and within 6 feet in places from existing buildings.



(R., Vol. V, Bates 0865)

Pandrea also provided the District Court with an appraisal showing an over $19,000.00 reduction in Pandrea's "n*ew*" Parcel 1 should the "*new*" second easement be allowed. Pandrea reasoned that the "*new*" second easement "greatly prejudiced" her in contravention of Idaho Code § 6-501. Pandrea's position was that the "Existing Road" easement appurtenant to both Clark's "*new*" Parcel 2, and Clark's individually owned Parcel 10, already provided adequate

ingress and egress by way of a well-traveled 30' wide road and utility easement. Clark argued that there was no "Existing Road" easement to begin with, although the Court later acknowledged that there was.

The District Court did not agree with Pandrea's definition of "great prejudice" which is one of the issues Pandrea presents on appeal.

B. Course of Proceedings.

The initial complaint was filed by Pandrea on May 11, 2011 for Partition and Accounting upon Clark individually and as the Trustee for the Clark Trust (R., Vol. I, Bates 0039-0044; R., Vol. II, Bates 0292, ¶1, line 1). On June 20, 2011, Ethel M. Boyd served upon Pandrea a copy of Clark's *pro se* Notice of Appearance (R., Vol. I, Bates 0056-0057).

A Notice of Intent to Take Default was filed by Pandrea on June 22, 2011(R., Vol. I, Bates 0060-0061). Clark's Answer was served upon Pandrea by Clark's niece, Terri Boyd-Davis, on June 23, 2011, indicating in part that Exhibit A to the Complaint was not attached (R., Vol. I, Bates 0062-0067). An Answer filed on behalf of the Trustee of the Kari A. Clark Trust was filed on June 29, 2011 by the attorney for the Kari A. Clark Trust, Shirley Bade (R., Vol. I, Bates 0071-0076).

An Order to Amend Complaint was entered on October 12, 2011, which included a copy of the missing Exhibit A from the original complaint (R., Vol. I, Bates 0082; R., Vol. II, Bates 0292, ¶1, line 2). Clark, as *Pro Se*, filed an Answer to the Amended Complaint and a Counterclaim on October 19, 2011; along with a response by Clark's counsel on behalf of the Kari A. Clark Trust (R., Vol. I, Bates 0097-0106; R., Vol. II, Bates 0292, ¶1, lines 8-9).

A two-day bench trial was held on June 12 and 13 of 2012 (R., Vol. II Bates 0268-0288; Tr. , Court trial, p. 1-295). The Court issued its trial decision on August 16, 2012 (R., Vol. II,

Bates 0290-0298). As a result, Pandrea was awarded the entirety of Parcel 1 and 8+ acres of Parcel 2 (R., Vol. II, Bates 0297). Clark was awarded 10+ acres of Parcel 2 (*Id.*).[1]

Clark objected to Pandrea's proposed judgment and decree of partition on November 11, 2012. The Court entered a second decision on January 15, 2013 ordering Clark to prepare a survey and easement (R., Vol. II, Bates 0315-0319).

Pandrea filed her Notice of Intent to represent herself *Pro Se* on March 5, 2013 (R., Vol. II, Bates 0322-0323). A Motion for Reconsideration of the Trial Decision was filed by Pandrea on March 6, 2013 (R., Vol II, Bates 0327-0328). On March 28, 2013, Clark objected to Pandrea's pro se filings on the basis that Pandrea's counsel had not withdrawn (R., Vol. II, Bates 0337-0339). An Order was entered allowing Pandrea's counsel to withdraw on March 28, 2013 (R., Vol. II, Bates 0340-0342).

Pandrea filed her second Notice of Appearance *Pro Se* on April 8, 2013 (R., Vol. II, Bates 0346-0348). A Re-Filed Motion for Reconsideration was then filed by Pandrea on April 26, 2013 (R., Vol. II, Bates 0353-0355) and a hearing was held on June 20, 2013 (Tr. Motion for Reconsideration, p. 1-77). The Court denied the reconsideration motion in open court (Tr.-Motion for Reconsideration, p. 67, lines 18-19) and further ordered a proposed survey be submitted to Pandrea (by Clark) and a follow-up hearing scheduled for final judgment (*Id.,* p. 75, lines 15-22). During this hearing, it was also determined that Parcel 2 was 18.72 acres, not approximately 15 acres (*Id.,* p. 6, lines 6-11).

The Court concluded on June 20, 2013 that Pandrea had not properly brought claims of slander of title, breach of duty, or quiet title in her reconsideration motion as these causes of action were not in her original complaint (Id., p. 64, lines 18-25 and p. 65, p. 66, lines 1-5).

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[1] The acreage in Parcel 1 was later determined to be 4.44 acres and Parcel 2 was 18.72 acres.

Since these claims were not discovered until "after" trial, they were not causes of action at the initial filing of the complaint.

On August 30, 2013, Pandrea then attempted to file a leave to amend her complaint to include additional causes of action and to add as a party the Barrett's (R., Vol. III, Bates 0522-0523). On October 18, 2013 a hearing was held on Pandrea's motion with a written decision filed on November 27, 2013 (R., Vol. III, Bates 0575-0580). The Court acknowledged that Pandrea's motion was applicable under I.R.C.P 15 (a) because there were new claims that were not tried by consent of the parties (R., Vol. III, Bates 0577, ¶ 3, line 4). The Court then denied the motion based on prejudice to Clark citing her age and financial status as the determining factors for the prejudice (R., Vol. III, Bates 0579, ¶ 3, line 1).

On December 6, 2013, John F. Thornton's motion to intervene was heard, and denied in open court at the conclusion of the hearing (R., Vol. III, Bates 0582-0586). The Court issued a statement that it had no authority to grant an easement across the Thornton property. (*Id.*, Bates 585). The Court also acknowledged that as Thornton had filed a separate action in Bonner County any issues between Thornton and Pandrea/Clark could be resolved in that litigation (*Id.*).

On December 27, 2013, Clark filed her Motion for Entry of Final Judgment along with a copy of the proposed judgment and decree of partition (R., Vol. III, Bates 0587). Pandrea filed an objection to the proposed judgment on January 3, 2014, as the judgment did not accurately describe the new parcels (R., Vol. III, Bates 0589-0610). The judgment also contradicted the district court's order by describing an easement ***crossing over the Thornton parcel*** *(Id.)*.

A hearing was held on January 17, 2014 whereby Clark and Pandrea each provided the Court with a proposed judgment and decree of partition for consideration (Tr. Entry of Judgment, p. 124-155). The Final Judgment and Decree of Partition was signed by the Court and entered

on record on January 24, 2014 with Clark's *revised* proposal being accepted by the Court (R., Vol. IV, Bates 0713-0719)[2].

Pandrea timely filed a Motion for Reconsideration of the final judgment and decree of partition under I.R.C.P. 54(e) on February 7, 2014 (R., Vol. IV, Bates 0720-0722). The basis of Pandrea's motion was a verified appraisal report based on the decree of partition confirming that the *new* second easement crossing over Pandrea's *new* Parcel 1 reduced the per acre value of the property from $5,000 per acre to $3,500 per acre (a 30% reduction in value) (R., Vol. V., Bates 0850-0869). Due to the addition of the *new* second easement, the reduction in the two parcels combined value *after the partition* was approximately $19,000.00 *less than before the partition* in contravention to I.C.§ 6-501 (Exhibit 12-Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Reconsideration of Final Judgment and Decree of Partition, p. 10, ¶ 1-2, p. 11, ¶ 1).

Meanwhile, a hearing was held on March 14, 2014 on Clark's objection to attorney fees and costs as contained in Pandrea's memorandum (R., Vol. V, Bates 0845-0847). The Court concluded that the Pandrea/Clark Revocable Trust did not adequately specify attorney fees against the trustee that did not properly revoke the trust, and the case, being one in equity, resolved with each party receiving their "fair share", thus costs and attorney fees were denied (R., Vol. V, Bates 0892, ¶2 and Bates 0894, ¶3).

A hearing was held on May 2, 2014 for Pandrea's reconsideration motion (R., Vol. V, Bates 0896-0898). The decision was issued on June 3, 2014 whereby the Court concluded that a basis for relief allowing the Court's discretion in revising the judgment had not been established by Pandrea and the motion was denied (R., Vol. V., Bates 0922).

[2] The Final Judgment was officially entered on September 11, 2014 after this Court determined the January 24, 2014 judgment did not comply with IRCP 54(a).

Pandrea timely filed her Notice of Appeal on July 14, 2014 (R., Vol. V, Bates 0925-0933). On July 24, 2014, the appeal was Conditionally Dismissed pending a compliant judgment under I.R.C.P. 54(a). On October 9, 2014, an ORDER was entered reinstating the appellate proceedings (R., Vol. V, Bates 0961-0962).

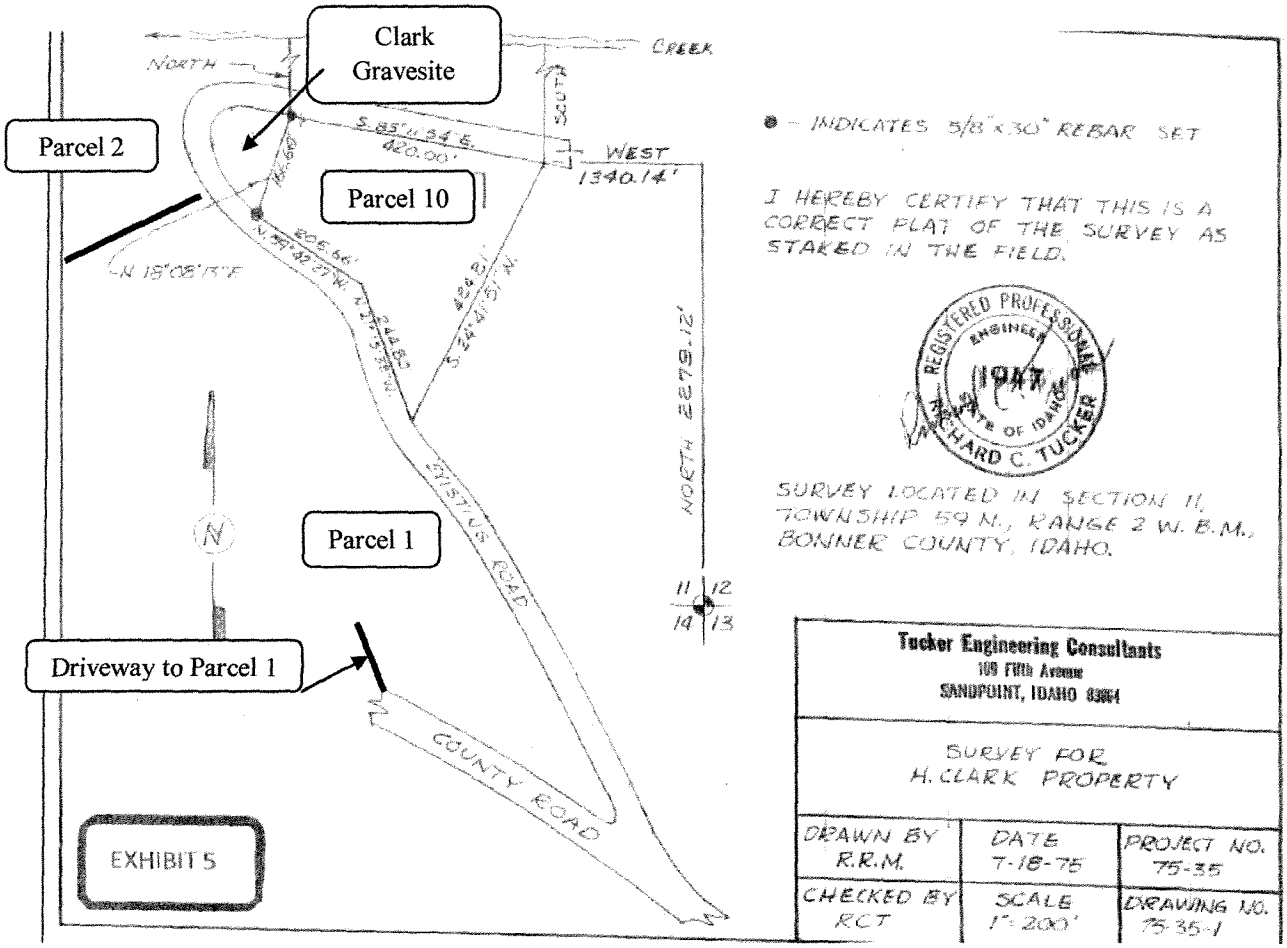
C. Statement of Facts.

A. PROPERTY HISTORY: In 1944, Harry F. and Edith E. Clark purchased several hundred acres of real property in Pack River Valley, Idaho located in Bonner County (R., Vol. II, Bates 0290 ¶ 1; R., Vol. IV, Bates 0724, ¶2; Tr. Court Trial, p. 33, lines 2-6). By 1946, Harry F. Clark had built a log house, a barn and several outbuildings on approximately 5 acres (R., Vol. IV., Bates 0724, ¶4; Tr. Court Trial, p. 33, lines 13-14, p. 204, lines 8-9).

Just before the residence a bridge was eventually built over Tavern Creek to allow access to the residence from the county road (R., Vol. IV., Bates 0724, ¶5). Prior to the bridge being built in the late 1940's, the only access to the house was by crossing over the Pack River by horse and wagon (Tr., Court Trial, p. 82, lines 22-24, p. 203, lines 18-20). The Tavern Creek Bridge was last replaced in 1991 by Pandrea after being impassable for about 10 years (Tr., Court trial, p.83, lines 22-25 and p. 84, lines 1-22; R., Vol. IV., Bates 0735, ¶17).

In the 1950's, Harry F. Clark built a road to reach the majority of his property, mainly for timber harvesting (R., Vol. IV., Bates 0725, ¶9 and 0727, ¶16, lines 3-4). This "Exisitng Road" started from the county road, roughly 300 feet southeasterly from Harry F Clark's driveway, and continuing into the Kaniksu National Forest (Ex. 8, p. 22, ¶2; Tr., Court Trial, p. 76, lines 21-23). It is this "Existing Road" that later became a permanent easement running with all of the Harry F. and Edith E. Clark Property (with the exception of the 5 acre homestead) (R., Vol. IV, Bates 0727, ¶16, lines 3-6; Ex. 8, p. 21, ¶4, lines 3-4, p. 22, ¶2).

In 1975, Harry F. and Edith E. Clark conveyed all of their approximate 300 acres into a trust with the Bank of Idaho as the Trustee (R., Vol. IV., Bates 0727, ¶15, line 1; Tr., Court Trial, p. 36, lines 22-25; R., Vol. II, Bates 0239, ¶ 1, lines 4-6). At that time, the Bank of Idaho, as Trustee, entered into an easement agreement with neighboring landowners, Stephen and Michelle Murphy, to allow the "Existing Road" easement to run with any future parcels created from the Harry F. and Edith E. Clark Trust (Ex.8, p. 22, ¶1). The "Existing Road" easement was recorded in 1975 as Instrument Number 170365 (Ex.8, p. 22, ¶2).



(Ex. 8-Reconsideration Memorandum, attached as exhibit 5-*Enhanced to show approximate location of the new parcels after the partition*)

In June of 1975, Harry F. Clark was killed in a tractor accident while he was working on repairing the bridge over Tavern Creek (Tr., Court Trial, p. 83, lines 9-16). Harry F. Clark was buried on his property near the "Existing Road" (R., Vol. II, Bates 0240, ¶2, lines 1-3; Exhibit 3b-Defendant's Post Trial Brief, p. 2, ¶ 2, lines 4-6; Tr., Court Trial, p. 77, lines 1-2).

Tucker Engineering was then commissioned by the Bank of Idaho to create parcels from the 300 acre Clark Estate, which were to be sold to generate income for Harry's widow, Edith E. Clark (Tr., Court Trial, p. 36, lines 5-19 and p. 38, lines 18-25 through p. 39, lines 1-11). The "Existing Road" easement was included as an easement for ingress and egress for most of the parcels that were created, including Parcel 2 and Parcel 10 (Ex. 8-Reconsideration Memorandum, p. 22, ¶1).

Obviously, the 5 acre *homestead parcel* Tucker Engineering created was the exception as direct access from the county road (and over the Tavern Creek Bridge) already existed (see map above). Tucker Engineering, did, however, describe a service easement over the 5 acre parcel for existing utility easements of record (R., Vol. I, Bates 0089, ¶3-5). The Bank of Idaho as Trustee ***did not*** reserve any rights in Parcel 1 when it was sold from the Harry F. and Edith E. Clark Trust in 1980 (R., Vol. I, Bates 0089).

The *homestead parcel* is referenced in these proceedings as Parcel 1.

Parcel 1:

In 1980, Pandrea purchased the 5 acre *homestead parcel* (Parcel 1/Instrument Number 226223) from the Bank of Idaho as Trustee for the Clark trust, which included the original log home and outbuildings (R., Vol. I, Bates 0192, #1; R., Vol. II, Bates 0240, ¶2, line 1; R., Vol. II, Bates 0290, ¶ 2, line 1 and 2; Exhibit 3a- Plaintiff's Post-Trial Brief, p. 2, line 4-5; Exhibit 3b-Defendant's Post Trial Brief, p. 3, ¶1). Pandrea quit claimed to Clark one-half undivided interest

in Parcel 1 in 1981 (R., Vol. I, Bates 0192, ¶3, lines 3-4; R., Vol. II, Bates 0290, ¶2, lines 4-5; Exhibit 3a-Plaintiff's Post-Trial Brief, p. 2, ¶ 2, lines 7-8; Exhibit 3b-Defendant's Post Trial Brief, p. 3, ¶7).

In 1992, Pandrea and Clark conveyed a small sliver of land from Parcel 1 to the neighboring parcel which is currently owned by John F. Thornton (Ex. 8, Reconsideration Memorandum, p. 21, ¶3). The portion of Parcel 1 that was conveyed to the Thornton property included the portion of the driveway for Parcel 1 from the centerline of the Tavern Creek to the county road (*Id.*). Therefore, Parcel 1 reserved an easement within the conveyance to allow for continued access for the home on Parcel 1 via the existing driveway (*Id.*).

In 2002, Pandrea and Clark conveyed Parcel 1 into the Clark/Pandrea Revocable Trust (R., Vol. II, Bates 0240, ¶4, and Bates 0241, ¶3; R., Vol. II, Bates 0291, ¶2; R., Vol. I, Bates 0193, ¶1; Ex. 3a-Plaintiff' Post-Trial Brief, p. 2, ¶2, lines 2-4; Ex. 3b-Defendant's Post-Trial Brief, p. 3, ¶8 and p. 4, ¶5; Ex. 8-Reconsideration Memorandum, p. 7, ¶6). Two years later, Pandrea hired her son, John Pandrea, to begin renovations on the old log house (Tr., Court Trial, p. 89, lines 13-16; R., Vol. II., Bates 0244, ¶1, lines 18-22; R., Vol. II, Bates 0244, ¶19-22). The old log house was on the verge of collapse with a gapping whole in the roof (Ex. 3a-Plaintiff's Post-Trial Brief, p. 8, ¶2, lines 7-8; Tr.-Court Trial, p. 140, lines 22-24).

Clark revoked the Clark/Pandrea Revocable Trust in 2010 and deeded one-half undivided interest in Parcel 1 to Pandrea and one-half undivided interest to the Kari A. Clark individual Trust, u/a 2010 (R., Vol. I, Bates 0193, ¶11; R., Vol. II, Bates 0240, ¶6; R., Vol. II, Bates 0291, ¶3, lines 2-3; Ex. 3a-Plaintiff's Post-Trial Brief, p. 2, ¶3, line 7; Ex. 3b-Defendant's Post-Trial Brief, p. 4, ¶6).

Parcel 2:

In 1991, Clark purchased from the Bank of Idaho, 18.72 acres of property from the Harry F. and Edith E. Clark Trust referenced as Parcel 2 (Instrument Number 396781) and shown on the map of parcels above as Parcel II (R., Vol. I, Bates 0192, ¶2; R., Vol. II., Bates 0239, ¶3; R., Vol. II., Bates 0290, ¶2 and 0291 ¶1; Ex. 3a- Plaintiff's Post-Trial Brief, p. 2, ¶2, lines 8-10; Ex. 3b-Defendant's Post-Trial Brief, p. 4, ¶3, lines 1-3).

Parcel 2 was described with the "Existing Road" easement (also referred in these proceedings as the "upper road") which was appurtenant to Parcel 2 (R., Vol. IV., Bates 0727, ¶ 16, lines 3-6; R., Vol. V, Bates 0857, ¶4; Ex. 3a-Plaintiff's Post-Trial Brief, p. 11, ¶2, lines 8-10).

In 1992, Clark deeded one-half undivided interest in Parcel 2 to Pandrea (R., Vol. I., Bates 0192, ¶2, lines 3-4; R., Vol. II, Bates 0241, ¶2; R., Vol. II, Bates 0291, ¶1, lines 3-4; R., Vol. IV, Bates 0727, ¶16, lines 2-3; Ex. 3a, p. 2, ¶2, lines 9-10; Ex. 3b, p. 4)

In 2002, Parcel 2 was conveyed into the Clark/Pandrea Revocable Trust (R., Vol. I, Bates 0193, ¶5; R., Vol. II, Bates 0291, ¶2, lines 1-3; R., Vol. II, Bates 0241, ¶3, lines 1-3; Ex. 3a-Plaintiff's Post-Trial Brief, p. 2, ¶3, lines 2-4; Ex. 3b-Defendant's Post-Trial Brief, p. 4, ¶5).

Upon revocation of the Clark/Pandrea Trust in 2010, Clark improperly deeded ***all*** of Parcel 2 to her own individual Kari A. Clark Trust (R., Vol. I, Bates 0041, ¶10; R., Vol. I, Bates 0193, ¶12; R., Vol. II, Bates 0291, ¶3, lines 3-4; R., Vol. II, Bates 0241, ¶5; Ex. 3a-Plaintiff's Post-Trial Brief, p. 2, ¶3, lines 7-8). Trial testimony supports that Clark did not accidentally make this conveyance:

[Douglas Marfice]

Q. Why did you—why did you dissolve the trust and convey the properties out of the trust in June 2010?

[Kari Clark]

A. First of all, I thought it would be kind of nice to go up to my own property and not be harassed, not be called dirty names, not have people yelling at me, driving past me. Yes, that's why.

Q. And by your "own property", are you referring to parcel number ten, or are you referring to one, two and ten all together?

A. Number one belongs to Mary Pandrea, my sister Mary Pandrea. **The other two are mine and I wanted them back like they were.**

Q. So, you conveyed out of the trust, by virtue of exhibit 44, all 100 percent of parcel two to yourself, didn't you?

A. Actually, my attorney made a mistake...

Q. Ma'am, just a minute ago that isn't what you said.

A. Well, I didn't mean to say that. Just like everybody makes mistakes. I hadn't intended to take that, and Shirley didn't mean to either.

(Tr.-Court Trial, pp.230-231; Ex. 3a-Plaintiff's Post-Trial Brief, p. 2, ¶3, lines 8-11 and p. 3).

Over a year later, and after Pandrea filed her compliant for partition of Parcel 2, Clark deeded one-half interest in Parcel 2 back to Pandrea (R., Vol. I, Bates 0194, ¶1; R., Vol. II, Bates 0241, ¶6; R., Vol. II, Bates 0291, ¶3, lines 7-9; Ex. 3b-Defendant's Post-Trial Brief, p. 4, ¶6).

Parcel 10:

In 1991, Clark was gifted an approximate 5.3 acre parcel from the beneficiaries of the Harry F. and Edith E. Clark Trust that is contiguous to Parcel 2 (R., Vol. I, Bates 0192, ¶5; R., Vol. II, Bates 0291, ¶1, lines 4-5; Ex. 3a-Plaintiff's Post-Trial Brief, p.2, ¶3, lines 3-4). This parcel has been referenced in these proceedings as Parcel 10, and is shown on map of parcels above as Parcel X (Tr., Court Trial, p. 219, lines 12-20; Ex. 8-reconsideration Memorandum, exhibit 6 to the attachments p. 6). Identically to Parcel 2, Parcel 10 was also described with the

"Existing Road" easement as appurtenant to Parcel 10 (Tr., Court Trial, p. 219, lines 8-11; Ex., 8-Reconsideration Memorandum, p. 22, ¶2).

The deed for Parcel 10 describes the easement as "[t]ogether with an easement for ingress and egress over the ***existing road*** from the tract as hereby described to the existing road: (*Id.*, exhibit 6 to the attachments at p. 6, ¶4), while the easement to Parcel 2 is similarly described as "[t]ogether with and subject to a 30.0 foot easement for a road-right of way and utilities on ***existing road*** as surveyed or to be surveyed (R., Vol. I, Bates 0090, ¶4).

In 2002, Clark conveyed all of Parcel 10 into the Clark/Pandrea Revocable Trust (R., Vol. I, Bates 0193, ¶1, lines 3-4; R., Vol. II, Bates 0291, ¶2, line 5; Ex. 3a-Plaintiff's Post-Trial Brief, p. 2, ¶3, lines 3-4). Clark properly conveyed all of Parcel 10 to the Kari A. Clark Trust when she revoked the Clark/Pandrea Trust in 2010 (R., Vol I, Bates 0193, ¶6; r., Vol. II, Bates 0291, ¶3, lines 4-5).

FAMILY HISTORY:

Pandrea and Clark are two of the siblings who lived on the 5 acre homestead (Parcel 1) with their parents, Harry and Edith, in the late 1940's and 1950's (Tr., Court Trial, p. 34, lines 11-15; p. 33, lines 3-14; p. 204, line 8). Pandrea and her two children also lived on Parcel 1 for six years in 1966 through 1972 (R., Vol. IV, Bates 0726, ¶5; Bates 0733, ¶ 5, ¶6). Today, Pandrea resides permanently on the new Parcel 1 which is now 12.739 acres (R., Vol. V, Bates 0947, 0948; Tr., p. lines 15-23).

Beginning in 1975, Pandrea had taken her mother, Edith "under her wing" when Pandrea's father died, because "nobody else in the family really seemed to care about [Edith] and her situation" which ended thirty-four years later (in 2009) upon the passing of Edith Clark (Tr., p. 45, lines 4-12; R., Vol. II, Bates 0380, ¶4).

In 2002, Pandrea's mother gifted Pandrea $100,000 out of love and affection (Ex. 8-Reconsideration Memorandum-See page 5, ¶2, line 3 to the attached exhibit 16-Incident Report; R., Vol. I, Bates 0151, ¶4, line4-5).

In 2004, Pandrea allowed her son, John Pandrea to live in the house while he was making the renovations to the house[3] (Tr.-Court Trial, p. 135, lines 9-16; p. 176, lines 9-17). Pandrea also agreed to pay her son for his labor (*Id.*, p. 176 lines 17-23; p. 93, lines 14-22; p. 176, lines 18-20).

Before 2005, Pandrea and Clark had always had a close and loving relationship (Tr., Court Trial, p. 145, lines 2-3; p. 232, line 16). On or about 2005, Pandrea and another sibling, her half-sister, Ethel M. Boyd, had a disagreement that ultimately ended Pandrea and Ethel M. Boyd's relationship (R., Vol. IV., Bates 0735-0736, ¶18.). The fallout from this affected the remaining siblings as well, and sides were taken and established by the siblings (R., Vol. I, Bates 0194, ¶2, lines 1-3; R., Vol. I, Bates 0192, FN: 1; Tr. Court Trial, p. 57, line 25-p. 58, lines 1-20). Three siblings, Wilma Mican, Jean Coleman, and Kari Clark sided with Boyd (*Id.*). These three sisters, along with Ethel M. Boyd's family, continue (at the direction of Boyd) to harass and damage Pandrea (R., Vol. IV, Bates 0735, ¶6-0735, ¶1; Ex. 8-Reconsideration Memorandum, p. 24, ¶6-p. 25, ¶1and ¶3, lines 4-7-see exhibit 16 to the Reconsideration Memorandum).

Ethel M. Boyd, Terri Boyd-Davis, Brian Davis, Deanna Barrett and Clark (among others) have conspired to take Pandrea's Idaho property (R., Vol. II, Bates 0399, ¶2; Ex. 8-Reconsideration Memorandum, p. 11, ¶2, lines 1-2; p. 25, ¶2, lines 2-6).

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[3] This usually occurred during the summer months as John Pandrea resides in Hawaii during the year.

In 2007, Pandrea filed a harassment report (regarding Ethel M. Boyd's conduct between 2006 and 2007) with the Bonner County Sheriff's Office (Ex. 8-Reconsideration Memorandum-See exhibit "A" to the attached exhibit 16-Incident Report). A majority of the harassment involved unwelcome photographing, stalking and verbal threats, such as Ethel M. Boyd's comment to Pandrea that "Your troubles are just beginning" (*Id.*, p. 3, ¶4).

Also in 2007, Ethel M. Boyd filed a false report against Pandrea for financial abuse of an elder adult (re; Pandrea's mother Edith) with the North Idaho Area Agency on Aging (*Id.*,-See exhibit "B" to the attached exhibit 16-Incident Report). The same year, Ethel M. Boyd then filed a false complaint in Washington State with the Department of Social and Health Services (DSHS) directly against her mother, Edith (*Id.*, See exhibit "C" to the attached exhibit 16-Incident Report). As a result, Pandrea sent Ethel M. Boyd a certified letter requesting no further contact with Boyd, and established visitation with their mother, Edith, be by arrangement with Pandrea's daughter (*Id.*, See exhibit "D" to the attached exhibit 16-Incident Report).

On August 1, 2009, Pandrea was assaulted by Terri Boyd-Davis at Mary's house (in front of Pandrea's 13 year old niece) whereby Pandrea filed a report with the Bonner County Sheriff's Department (*Id.*, See exhibit "E" to the attached exhibit 16-Incident Report).

Three days later, Boyd-Davis and her mother, Ethel M. Boyd, filed a false report with DSHS against Pandrea for neglect and financial exploitation of Edith Clark, who was no longer in Pandrea's care, but in the Cheney Care Center (*Id.*, See exhibit "F" to the attached exhibit 16-Incident Report).

In 2009, Edith E. Clark passed away in the Cheney Care Center. Ethel M. Boyd filed for and received Letters of Administration for Edith Clark's Estate ("estate") and subsequently filed a legal action against Pandrea in 2010 on behalf of the estate (which resulted in a judgment that

was overturned by the Washington State Appellate Court in October of 2015)(*Id.*, p. 25, ¶3, lines 1-2; See Page 5, ¶1-3, to the attached exhibit 16-Incident Report).

In addition to the Washington lawsuit being filed by Ethel M. Boyd in 2010, and Clark's transfer of the entirety of Parcel 2 to her new Kari A. Clark Trust in 2010, Terri Boyd-Davis, Brian Davis and Jean Coleman (Pandrea's sister) also filed a lawsuit against Pandrea in Bonner County for a boundary dispute regarding property to which Pandrea held no interest (Ex. 8-Reconsideration Memorandum, p. 26, ¶3, lines 1-4; See p. 4, ¶4-6 to the attached exhibit 16-Incident Report). Pandrea was dismissed from the action (Ex. 8-Reconsideration Memorandum-p. 26, ¶3, lines 4-5).

Clark also sent correspondence to Pandrea in 2010 giving notice that "Pandrea will make no financial commitment against the properties without the written consent of Clark" (Ex. 8-Reconsideration Motion, p. 11, ¶6

In 2011, Pandrea filed her complaint for accounting and partition against Clark after attempting to work things out with Clark for over a year, including 2 offers for purchase of Clark's one-half undivided interest (at substantially more than 50% of the appraised value)(Ex. 1, p. 26; R., Vol. I. Bates 0086, ¶ 1; Tr.-Court Trial, p. 179, lines 16-24; p. 180, lines 15-21).

In response to the complaint filed by Pandrea, *three months later* Clark conveyed one-half undivided interest in Parcel 2 back to Pandrea (Tr.-Court trial, p. 115, lines 5-15; R., Vol I, Bates 0194, ¶1; R., Vol. II, Bates 0241, ¶6; Bates 0291, ¶3, line 6-8). Clark also filed a counterclaim, in part erroneously claiming that Pandrea would not let her on the property when Clark visited once a year (Tr., Court Trial, p. 59, lines 20-25; p. 191, lines 16-19; p. 257, lines 8-12;). Trial testimony revealed Pandrea locked a gate for safety and security reasons when the property was unoccupied and pictures of Clark in the house in 2008 contrary to her testimony

(Tr.-Court Trial, p. 174, lines 9-25-p. 175, lines 1-5; R., Ex. 3a-Plaintiff's Post-Trial Brief, p. 6, ¶4[FN1]).

In March of 2012, Terri Boyd-Davis posted a derogatory YouTube video of Pandrea with comments including "sometimes they [referring to Pandrea and her son] mess with the wrong people" (Ex. 8-Reconsideration Memorandum-See exhibit "J" to the attached exhibit 16-Incident Report).

Just one month later, Brian F. Davis, Clark, Deanna Barrett, Rhonda Carle (Boyd-Davis' sister), and Wilma Mican engaged in breaking and entering into the log house on Parcel 1 where Pandrea's son, John Pandrea, was living (R., Vol. II, Bates 0382-0384; R., Vol. II, Bates 0398, ¶lines 2-4; Ex. 8-Reconsideration Memorandum-p. 27, ¶2, line 1; See exhibit "K" to the attached exhibit 16-Incident Report). John Pandrea had clearly posted no trespassing signs and a private residence sign on the house where he had his tools and personal belongings (Tr. Court Trial-p. 191, lines 20-25-p. 191, lines 1-11; R., Vol. II, Bates 0382). These signs were destroyed by Rhonda Carle and Brian Davis during the break-in (R., Vol. II, Bates 0383).

Clark and Wilma Mican were the only people remaining when the police arrived and Clark later testified that she became aware that John Pandrea was residing in the house on Easter Sunday (April 2012) when Clark and her sister Wilma "were just having a nice walk after we had to cut the lock off the door...and after we had walked briefly in the house" (Tr., p. 233, lines 15-23).

On May 14, 2012, John Pandrea filed a materialman's lien against the properties in the Clark/Pandrea Revocable Trust for $84,750.00 under I.C. § 54-5205(p); 5208 and 45-501) (R., Vol. II, Bates 0294, ¶3; R., Vol. III, Bates 0535, ¶1Tr.,-Court Trial, p. 175, lines 1-5).

During the course of the Washington litigation Ethel M. Boyd attempted to "settle" with

Pandrea by trying to get title to Pandrea's Idaho property (Ex. 8-Reconsideration Memorandum, p. 26, ¶2). Prior to the judgment being reversed, Ethel M. Boyd filed a foreign judgment on May 17, 2012, against Pandrea's Idaho property instead of Pandrea's property in Hawaii (*Id.*, p. 27, ¶4, See exhibit "L" to the attached exhibit 16-Incident Report). As Pandrea's interest in the Idaho property had not been determined in the partition action, the Writ of Execution issued as a result of the foreign judgment was quashed (Ex. 8, See exhibit "L" to the attached exhibit 16-Incident Report, p. 5, ¶4 and p. 6, ¶2).

Also on May 17, 2012, Clark conveyed all of Pandrea's interest in both Parcel 1 and Parcel 2 to Kenneth J. and Deanna L. Barrett by way of a Deed of Trust recorded by Ethel M. Boyd as Instrument Number 826342(Ex. 8-Reconsideration Memorandum, p. 12, ¶4, lines 3-5, See exhibit "M" to the attached exhibit 16-Incident Report; R., Vol. III, Bates 0535, ¶4). **This information was *not disclosed* in Clark's pre-trial brief on May 24, 2012** (R., Vol. III, Bates 0535, ¶5, Ex. 8-Reconsideration Memorandum, p. 12, lines 3-5). On October 15, 2013, Clark admitted she used the properties as collateral to secure a loan to pay for attorney fees (R., Vol. III, Bates 0543, ¶5).

Just prior to trial, on May 27, 2012, Ethel M. Boyd, Terri Boyd-Davis and Brian F. Davis entered Pandrea's property with a gun and threatened her son, John Pandrea, and Pandrea's caretaker, Mr. Gillette (Ex. 8-Reconsideration Memorandum, See p. 8, ¶4-6 of the attached exhibit 16-Incident Report).

Trial commenced on June 12, 2012 and ended on June 13, 2012, with post-trial briefs submitted by both parties (Ex. 3a and Ex. 3b). It was established at trial that Terri Boyd-Davis was working as a paralegal for Clark's attorney, Shirley Bade (Tr., p. 273, lines 11-23; R., Vol. II, Bates 0398, ¶3). The trial evidence supported Pandrea's position that Clark intentionally

conveyed all of Parcel 2 to the Kari A. Clark Trust in 2010 (Ex. 3a-Plaintiff's Post-Trial Brief, p. 2, ¶3, lines 8-11).

"Overall, Kari's testimony concerning her recollections of the property, her interests in the property, her visits to the property and her interactions with Mary is marked by incongruity, contradictions and confusion" (Id., p. 6, ¶3, lines 1-3), "[b]y contrast, Mary's recall of salient details was cogent and consistent" (Id., p. 7, ¶2, line 1). Pandrea implored upon the Court the necessity for each party to have separate access to the properties once divided as ***"testimony at trial amply demonstrated that both the start and continuation of family friction over the past years emanated from the conflict on the road leading into the property"*** (Id., p. 11, ¶2, lines 10-12 and lines 1-3).

The day after trial, on June 14, 2012, Clark, Ethel M. Boyd and Wilma Mican appeared on Parcel 1 and began yelling obscenities at John Pandrea while he was in the house as Clark proceeded to grab a large stick and charge at the glass door (R., Vol. II, Bates 0384, ¶7-Bates 0385-0386).

On June 28, 2012, Ethel M. Boyd, Deanna Barrett, and her teenage son entered Pandrea's property where Pandrea was shoved by the teenager (Ex. 8-Reconsideration Memorandum, p. 10, ¶3 to the attached exhibit 16-incident Report; R., Vol. II, Bates 0387, ¶2).

The Court's trial decision was filed on August 16, 2012 (R., Vol. II, Bates 0290-0298).

In September of 2012, Pandrea's daughter was visiting from out of town and called the Bonner County Sheriff's Office to report that Terri Boyd-Davis and Ethel M. Boyd had been on Pandrea's property with a gun near the house where Pandrea's granddaughter slept (R., Vol. IV, Bates 0737, ¶3, lines 7-11).

In May of 2014, Clark quitclaimed all of her interest in the new Parcel 2 to Kenneth and Deanna Barrett, who have replaced Clark in this litigation (Notice of Substitution filed November 28, 2014 in this appeal).

II. ISSUES PRESENTED.

1. Did the district court err by denying Pandrea's Motion for Reconsideration under *I.R.C.P. 11(a)(2)(B)* in light of newly discovered information that was not disclosed by Clark prior to trial?

2. Did the district court err in denying Pandrea the right to amend her complaint under *I.R.C.P. 15 (a)(b)* to include all claims and all parties of interest not included in the original complaint?

3. Did the district court err in denying Pandrea's motion for reconsideration to alter or amend judgment pursuant to I.R.C.P. 59(e) and allowing Clark a secondary easement that creates great prejudice and violates *I.C.§ 6-501*?

III. ARGUMENT.

A. The district court erred by denying Pandrea's Motion for Reconsideration prior to the entry of judgment after Pandrea discovered slander of title in her property interests that Clark did not disclose prior to trial and that clouded title in Pandrea's property interests in the two parcels of property being partitioned in contravention to I.C. § 6-507.

STANDARD OF REVIEW: Idaho Rule of Civil Procedure 11(a)(2)(B) provides: "A motion for reconsideration of the trial court may be made at any time before the entry of final judgment...." "A party making a motion for reconsideration may present new facts, but the trial court is not required to research the record to determine if there is new information". *Coeur d'Alene Mining Co. v. First National Bank*, 118 Idaho 812, 800 P 2d 1026 (1990). When a district court decides a motion to reconsider, "the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered." *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). "Granting or denying a motion to reconsider is a discretionary decision". *Johnson v. Lambros*, 143 Idaho 468, 473, 147 P.3D 100, 105 (Ct. App. 2006), citing *Watson v. Navistar Int'l Transp. Corp.*, 121 Idaho 642, 654, 827 P.2d 656, 667 (1992) and *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 979 P.2d 107 (1999).

When reviewing a trial court's decision to grant or deny a motion for reconsideration, this Court will use the same standard of review the lower court used in deciding the motion for reconsideration. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989). However, this Court has free review over questions of law. *Hopper v. Hopper*, 144 Idaho 624,626,167 P. 3d 761, 763 (2007).

Upon discovering after trial that Clark had conveyed all of Pandrea's interest in the two parcels co-owned by Clark and Pandrea to the Barrett's, and prior to the entry of judgment, Pandrea filed a reconsideration motion under I.R.C.P 11(a)(2)(B). I.R.C.P. 11(a)(2)(B) provides the authority for a district court to reconsider and vacate interlocutory orders so long as final judgment has not yet been ordered. *Sammis,* 130 Idaho at 346, 941 P.2d at 318; *Farmers Nat'l Bank v. Shirey,* 126 Idaho 63, 68, 878 P.2d 762, 767 (1994). Pandrea requested the district court

determine that Clark and the Barrett's had slandered title in Pandrea and that the damages be compensated by quiet title in Pandrea for Clark's one-half undivided interest in the two parcels.

The district court acknowledged that there were material facts that were not known prior to the trial by way of the Deed of Trust between Clark and the Barrett's and Clark's testimony at trial, yet erroneously concluded that Pandrea was not injured by Clark and the Barrett's slander of title in Pandrea's property interests, because once the partition was finalized all interest Clark conveyed to the Barrett's would be shifted from Pandrea's portion of the partitioned property (Tr.-Motion for Reconsideration-June 26, 2013, p. 72,73).

This is in contradiction to I. C. § 6-507 whereby the defendants who have been personally served with the summons and a copy of the complaint (as was Clark), must set forth in their answers fully and particularly, the origin, nature and extent of their respective interests in the property, and **if such defendants claim a lien on the property by mortgage, judgment or otherwise,** they must state the original amount and date of the same, and the sum remaining due thereon, also whether the same has been secured in any other way or not; and if secured, the nature and extent of such security, **or they are deemed to have waived their right to such lien**.

This is also contrary to Idaho law regarding slander of title. In an Idaho case with similar facts, damages for slander of title were appropriate ***even after the improper conveyance had been corrected***. See *Porter v. Bassett-Mendenhall*, 146 Idaho 399, 405, 195 P.3d 1212, 1218 (2008). This Court also reiterated that "[s]lander of title requires proof of four elements: (1) publication of a slanderous statement; (2) its falsity; (3) malice; and (4) resulting special damages." *Id.,* Citing: *McPheters v. Maile,* 138 Idaho 391, 395, 64 P.3d 317, 321 (2003).

In *Porter v. Bassett-Mendenhall*, the Porters alleged that the improper conveyance of their property interest via a quitclaim deed by the Bassett's and Mendenhall's had: (1) disparaged

their title; (2) was a statement that was published to all the world by its recordation; (3) was reckless, erroneous, fraudulent, and wrongful;(4) the willingness of Bassett and Mendenhall to cloud and disparage the title demonstrates the will to vex, annoy, harass, and injure the Porters; and (5) they suffered damages as a direct and proximate result of the publication, with the amount to be determined at trial. (*Id., at 1219*). Like the Porter's, Pandrea succinctly met all of the criteria to establish slander of title based on the Deed of Trust between Clark and the Barrett's.

During Pandrea's hearing on her motion for reconsideration, Clark claimed that she borrowed $10,000.00 against "her interest" in the property to fund her defense by signing the Deed of Trust with the Barrett's and that this matter was "all of record before trial" (Tr.-Motion for Reconsideration-June 26, 2013, p. 41, lines 22-25-p. 42, lines 1-8). Neither Clark's trial brief (filed just days after Clark signed the Deed of Trust), nor Clark's post-trial brief, contained any mention of the Deed of Trust, the $10,000.00 lien against the properties, or the Barrett's interest in the properties as is required under I. C. § 6-507. Furthermore, the abstract of title for the properties prior to trial did not reveal this encumbrance as the Deed of Trust was only created just days before trial.

Moreover, Clark improperly conveyed 100% interest in both Parcel I and Parcel 2 to the Barrett's, **including Pandrea's undivided half interest,** indicating that the "Grantor does hereby irrevocably GRANT, BARGAIN, SELL AND CONVEY TO TRUSTEE IN TRUST WITH POWER OF SALE that property in the County of Bonner, State of Idaho, described as follows, and containing not more than eighty acres: parcel Number RP 50N02W118252A, Parcel Description: 11-59N-2W **Tax 40** Lying Northwesterly of the Centerline of Tavern Creek; **Tax 49**; Commonly known as 4687 Upper Pack River Road, Sandpoint, Id., 83864, described in more

detail on the attached Exhibit "A" & "B" (Ex. 8-Reconsideration Memorandum-see attached exhibit 1-A-Deed of Trust). Tax 40 is the assessor's number for Parcel I, and Tax 49 in the assessor's number for Parcel 2.

"A tenant-in-common may impose a lien or other encumbrance upon his or her own undivided interest in the property". *Patrick v. Bonthius*, 13 Wn.2d 210, 215, 124 P.2d 550 (1942). However, "one cotenant cannot do anything with respect to the common property to bind the cotenants without authorization or ratification". *McGill v. Shugarts*, 58 Wn.2d 203, 204, 361 P.2d 645 (1961).

Pandrea was unable to borrow against her own interests in the properties as Clark and the Barrett's slandered title in Pandrea property interests creating a cloud on Pandrea's title.

Pandrea requested the Deed of Trust be "voided" and that Clark's interest in the properties be quieted in title to Pandrea for damages. An action to quiet title may be brought by any person against another who is claiming an estate or interest in real or personal property adverse to the person's. I.C. § 6-401., See also *The Mode v. Myers,* 30 Idaho 159, 165, 164 P. 91, 92 (1917)("Any person, whether in actual possession of property or not and whether holding legal or equitable title, may bring and maintain an action to quiet title against another who claims an interest adverse to him").

The Barrett's purported to remedy the slander of title by filing an affidavit with the Bonner County Recorder's Office **over a year after the Deed of Trust was created,** relinquishing their claim of interest in Pandrea's undivided one-half interest in the properties. The district court improperly concluded that the Barrett's affidavit would suffice as a remedy, ignoring the fact that Pandrea had been disparaged of her rights to her own property interests

now **for over two years** (including Clark's original conveyance of all of Parcel 2 to the Kari A. Clark Trust).

The district court also erred by stating that only "one single parcel" had been encumbered by Clark and the Barrett's instead of the "two parcels" co-owned by Clark and Pandrea (Tr.-Motion for Reconsideration-June 26, 2013, p. 74, lines 19-25).

The district court's final analysis was that Pandrea could not ask the court to reconsider its decision as the claim for slander of title had not been properly brought in "Pandrea's original complaint", even though Pandrea had no knowledge of the second slander of title by way of the Deed of Trust until almost two years after the original complaint was filed (*Id.,* p. 64, 65, 66).

The district court erred by concluding that the interlocutory order entered in August of 2012, two years before the final judgment was entered, precluded Pandrea from requesting the court to reconsider the order based on new information discovered after trial that substantially altered the contours of the litigation. Pandrea, therefore, filed a motion for leave to amend her complaint.

B. The district court abused its discretion by denying Pandrea leave to amend her complaint under *I.R.C.P. 15 (a)(b)* prior to the entry of judgment to include all claims and all parties of interest not included in the first amended complaint.

STANDARD OF REVIEW: Idaho Rule of Civil Procedure 15(a) provides that courts "should freely give leave [to amend their pleadings] when justice so requires" and 15(b) addresses allowing amendments to conform to the evidence supporting an "amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, ***even after judgment***".

A trial court's decision to deny an amendment to pleadings is reviewed by this Court under an abuse of discretion standard. *See Cook v. State Dep't of Transp.,* 133 Idaho 288, 296,

985 P.2d 1150, 1158 (1999). In determining whether the trial court has abused its discretion, this Court applies the three-factor test articulated in *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991). The three factors are: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the boundaries of this discretion and consistent with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason. *See id.* at 94, 803 P.2d at 1000.

Pandrea filed her motion for leave to file a second amended complaint, prior to the entry of a final judgment, to comply with the district court's decision that Pandrea did not properly bring her claims against Clark and the Barrett's for slander of title in Pandrea's motion for reconsideration (Tr.- Motion for Reconsideration-June 26, 2013, p. 64, p. 65, p. 66, lines 1-5). "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits and the leave sought should, as the rules require, be "freely given." *Foman v. Davis*, 371 U.S.178, 182 (1962).

In the written decision, the district court "inaccurately" states that "*during trial* it was discovered that Clark secured litigation loan from the Barrett's which was secured by the jointly held property" (R., Vol. III, Bates 0577). To the contrary, Clark did not disclose this information before trial and Pandrea discovered the slander in her title after the trial (R., Vol. III, Bates 0529, ¶2). In fact, Pandrea only accidentally discovered the Deed of Trust because she became aware that the USDA was possibly foreclosing against Clark and Pandrea was making sure there were no liens against Pandrea's interest in the properties filed by the USDA *(Id.)*.

The district court denied Pandrea's leave to amend her complaint based in part on the timing of the motion. Pandrea argued that her motion was timely as it was filed as soon as

possible after discovering the Deed of Trust being recorded and before the entry of a final judgment. The Ninth Circuit Court has found that undue delay alone "is insufficient to justify denying a motion to amend" *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999). The Ninth Circuit Court has also surmised that the court applies Rule 15 to "facilitate [a] decision on the merits, rather than on the pleadings or technicalities." *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Furthermore, the court interprets the language for granting amendments under Rule 15 with "extreme liberality." *Id.*

The district court also concluded that Clark would be prejudiced by allowing Pandrea to amend her complaint because of Clark's age and her apparent financial situation (R., Vol.III, Bates 0579, ¶3, lines 1-3). Clark argued that Pandrea's motion was "clearly prejudicial", that Pandrea's claim of no prejudice was "patently false" and did not "require further analysis", yet Clark failed to clearly identify the source of prejudice and at no time claimed prejudice based on age or financial status which are the standards set forth by the district court in determining that Clark would be prejudiced by the leave to amend (R., Vol. III, Bates 0545, ¶4-5).

Lastly, the district court questioned the validity of Pandrea's claims even though Pandrea's title was clouded for over two years by Clark's actions (R., Vol. III, Bates 0579, ¶2). Pandrea's request to file an amended complaint was not futile as Pandrea alleged sufficient facts to state a claim for relief that was facially plausible. The facts at issue were not disputed by Clark, who fully acknowledged the instrument (Deed of Trust) that she signed and recorded in the Bonner County Recorder's Office just prior to trial. Where the proposed amendment is not clearly futile, denying leave to amend on this ground is highly improper, and the Ninth Circuit has "reversed the denial of a motion for leave to amend where the district court did not provide a

contemporaneous specific finding of prejudice to the opposing party, bad faith by the moving party, or futility of the amendment." *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999).

The district court abused its discretion by denying Pandrea's request to add claims for slander of title and quiet title based on information that was not disclosed prior to trial, but was discovered by Pandrea prior to the entry of the final judgment.

C. The district court erred in denying Pandrea's motion for reconsideration to alter or amend the judgment pursuant to I.R.C.P. 59(e) and allowing Clark a secondary easement that resulted in a decree of partition that caused "great prejudice" in contravention to *I.C.§ 6-501.*

Standard of Review: A decision on a motion to amend a judgment filed pursuant to Rule 59(e) is reviewed for an abuse of discretion. *McQuillion v. Duncan*, 342 F.3d 1012, 1014 (9th Cir. 2003); *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (discussing grounds upon which Rule 59(e) motion may be granted).

Regarding I.C.§ 6-501, the Idaho Supreme Court will exercises free review over the application and construction of the statute. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003).

Prior to the final judgment, the district court concluded that although an easement existed to Parcel 2 via the "Existing Road", the court was within its discretion to allow a secondary easement to Clark's new Parcel 2 (Tr., Entry of Judgment, p. 150, lines 4-12). However, the district court erred in failing to consider the "great prejudice" that resulted by the creation of a second easement to Parcel 2 by describing the second easement across Parcel 1, in contravention to I.C.§ 6-501[4]. Pandrea maintained that the properties *can be* divided in such a manner that

[4] According to *Idaho Code § 6-501* "When several cotenants hold and are in possession of real property as parceners, joint tenants or tenants in common, in which one (1) or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one (1) or more of such persons for a partition thereof,

each owner would not be prejudiced, but that the division as it was ordered *does not* comply with Idaho Code § 6-501.

Although Idaho has not specifically addressed the intent of "great prejudice" within the Idaho statute, the established test for "great prejudice" has been defined in other jurisdictions by assessing **"whether the value of the share of each [owner] in case of a partition would be materially less than his share of the money equivalent that could probably be obtained from the whole."** *Lay v. Raymond*, 336 P.3d 555 Oregon App. 488 (2014); Citing *Fike v. Sharer* 571, 582 P. 2d 1252 280 Or. (1977)(the financial interests of the owners is the primary factor to be considered for purposes of a determination of prejudice in the event of partition or sale); *Haggerty v. Nobles*, 419 P. 2d 9 - Oregon: Supreme Court 1966; *Briges v. Sperry*, 95 US 401, 406 - Supreme Court 1877; *Butte Creek Island Ranch v. Crim* (1982) 136 California App.3d 360, 367; *Berg v. Kremers*, 181 NW 2d 730 – North Dakota: Supreme Court 1970; *Gillmor v. Gillmor*, 657 P. 2d 736 - Utah: Supreme Court 1982; *Brown v. Boger*, 139 S.E.2d 577, 583- North Carolina 1965; *Trowbridge v. Donner*, 40 NW 2d 655 - Nebraska: Supreme Court 1950; *Von Behren v. Oberg*, 902 SW 2d 338 – Missouri: Court of Appeals, Eastern Dist. 1995; *Friend v. Friend*, Wn.964 P.2d 1219, 1222 (1998); *Doan v. Doan*, 208 Or. 508, 302 P.2d 565 (1956) (prejudice will rarely exist equally as to all parties, it is enough that great prejudice would occur as to one of them); *Tillett v. Lippert*, 909 P.2d 1161 (Montana 1996)("partitions should be fashioned to cause the least degree of harm to the cotenants and to confer no unfair advantage on any one cotenant"); *Kellog v. Dearborne* 119 P.3d 20, MT 188-Montana Supreme Court (2005) (partition cannot leave the parties with "lesser" property interests separately than they had together, nor bears a servitude, or restriction on use, that did not previously exist); *Martinez v.*

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according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof, ***if it appears that a partition cannot be made without great prejudice to the owners".***

Martinez (Colo.App.1981), 638 P.2d 834, 836 (citing *Johnson v. Ford* (1961), 233 Ark. 504, 345 S.W.2d 604)("A court's function when deciding a partition action is not to create new interests in property held by tenants in common, but is merely to sever the unity of possession owned by the tenants"); *Ashley v. Baker*, 867 P.2d 796, 792 (Alaska 1994) (Precidential)(The consensus view is that "great prejudice" refers to economic harm); *Campbell v. Jordan*, 675 S.E.2d 801-South Carolina Ct. App. 2009 (The partition procedure must be fair and equitable to all parties of the action); *LYONS-HART v. Hart*, 695 S.E.2d 818-North Carolina Ct. App. 2010 (the trial court must consider evidence of fair market value in determining whether a substantial injury would result from a partition in-kind); *Boltz v. Boltz*, 395 NW 2d 605 - Wisconsin: Court of Appeals 1986 (the court determined that great prejudice resulted if partition would cause a substantial economic loss).

The expert appraisal, conducted by Carter Appraisals, of the value of the two parcels in 2010, ***before*** the partition, was $5,000.00 per acre. (R., Vol. V, Bates 0856, ¶10-12.). With a combined acreage between Parcel 1 and Parcel 2 of 23.162 acres, the net value of the properties ***before*** the partition was **$115,810.00** (R. Vol. V, Bates 0901-0902). Based on the second Carter appraisal in 2014, the total value of the properties ***after*** the partition (based on the servitude of the new second easement) was **$$96,701.00**, a **net loss of $19,109.00** (and all realized on Pandrea's portion of the new parcels)*(Id.)*.

Therefore, the district court's decision that Pandrea did not establish the necessary standards to meet the spirit of "great prejudice" is erroneous and should be reversed.

Furthermore, the district court erred by concluding that while the court could properly consider Pandrea's motion to amend the judgment under I.R.C.P 59(e) "a showing of good cause

must be made to justify the consideration of new evidence" and the court was "not satisfied that a basis for that relief has been established" (R., Vol. V, Bates 0921, ¶4, lines 2-4-0922, ¶1).

First of all, Pandrea established good cause by successfully demonstrating that "great prejudice" had resulted from the partition based on the impact of the second easement on the net value of the properties. The second Carter Appraisal Report was completed in February of 2014, ***after*** the judgment was entered on January 24, 2014(R., Vol. V, Bates 0854-0869). Mr. Carter assessed the impact of a second easement crossing over Pandrea's Parcel 1 and determined that the value of Pandrea's awarded property was negatively affected (conservatively in excess of $19,000.00), by taking away 10,550 square feet of Pandrea's parcel and reducing its value by 30% (R., Vol. V, Bates 0856, ¶10-12).

Mr. Carter also provided for the court a comprehensive analysis and comparison of the two (2) easements that Clark's Parcel 2 was described with at the conclusion of the partition with **Easement "A"** representing the original appurtenant "Existing Road" easement for Parcel 2 and **Easement "B"** representing the new secondary easement for Parcel 2:

> The comparisons of the two easements, A and B, are based on which is, or should be, more favorable to the subject Clark 10.423 Acre parcel and cause the least damage to the Pandrea parcel.
>
> **Easement B** has been described in depth here in this report. To further explain, the year round road on this easement does not exist past the Pandrea buildings at this time. The easement area is supposedly over an old existing road on the property. As stated prior, the appraiser was physically on the property in November, 2010. At that time he drove to the Pandrea buildings and drove a little way into the property past that point. There was no snow at that time and the ground was bare other than natural vegetation. A summer use trail/road was the only access means past the buildings at that time.
>
> Any use of the trail/road for more than the summer or no inclement weather time period would be impossible. The easement is ten feet wide. Simply plowing snow from a normal snow storm would make berms on each side of the road probably 2 feet wide which would make the passage area of any road 6 feet wide.

> **Easement A** is an existing road that has been in place for many years. This road is even shown on the attached National Geographic topographic map, Exhibit F. This road runs into the Clark parcel and further up the mountain. It seems logical that to access the Clark property, if a road is already in place, why not use it?
>
> As a further disclaimer, the appraiser has not driven this road, merely viewed the road from where it leaves the Pack River Road. The opinion that this presents the most viable access to the property is based on the viewing and maps used with this report. (R., Vol. V, Bates 0857)

Secondly, Pandrea established good cause by successfully proving that the second easement vitiated the Bonner County Planning and Building Codes and created "great prejudice". Claire Marley, Director for the Bonner County Planning and Building, verified that Pandrea's new Parcel 1 would be burdened as the second easement did not comply with the setback requirements (extending only 6 feet from a building instead of the required 25 feet) which would prevent Pandrea from receiving a Certificate of Compliance at any future date which is required prior to obtaining a building permit (R., Vol. IV, Bates 0730, ¶2). Thus, the value of Pandrea's parcel would be greatly impacted should it be sold at a later date *(Id.)*.

In *Cox v. Cox*, this Court agreed with the district court that great prejudice would result from a partition where ***zoning laws very likely prohibited division of the property***. *Cox v. Cox*, 71 P. 3d 1028 - Idaho: Supreme Court 2003. The same standard was also used and upheld in Washington where the trial court found ***great prejudice to the owners because the properties could not be legally divided under the County's zoning and subdivision ordinances*** and since the division conflicts with local zoning and subdivision requirements it is "***prejudicial to the parties***". *Friend v. Friend*, 92 Wn. App. 799, 803-Washington (Oct. 1998) .

Pandrea, therefore, has successfully demonstrated that good cause was established and that the district court's analysis of "good cause" having *not* been established by Pandrea is an abuse of the court's discretion and should be reversed.

IV. CONCLUSION.

The final judgment in this case does not adjudicate all of the claims by all of the parties and prejudices Pandrea. The district court suggested that Pandrea file a separate claim for slander of title and quiet title provided the claims would not be barred by any statutes (R., Vol. III, Bates 0579, ¶4). This is not judicially efficient nor does it align with the intent of the judiciary in resolving litigation between the parties.

The district court also failed to properly render a decree of partition in the final judgment that adequately meets the standards for dividing the parcels so that neither party suffered "great prejudice" as a result of the partition.

For the foregoing reasons, Pandrea respectfully submits that the decisions of the district court are clearly erroneous. Consequently, Pandrea requests that the Supreme Court reverse the decisions and remand to the district court with instructions consistent with this Court's opinion.

DATED this 24th day of April, 2015.

Mary E. Pandrea
Appellant

CERTIFICATE OF SERVICE

On April 24th, 2015, I caused copies of the foregoing document to be served by the following methods on the parties listed below, which is the last known address for the listed parties:

Kenneth and Deanna Barrett
611 Watkins Street
Birmingham, MI 48009
(619)578-3524

✓ US Mail
___ Overnight Mail
___ Hand Delivered
___ Facsimile

Mary E. Pandrea
Mary E. Pandrea
Appellant